

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 662 of 1985

with

SPECIAL CIVIL APPLICATION No 4228 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
 2. To be referred to the Reporter or not? Yes
 3. Whether Their Lordships wish to see the fair copy of the judgement? No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge? No

SHAILESH S RAVAL

Versus

GUJARAT MARITIME BOARD

Appearance:

1. Special Civil Application No. 662 of 1985
MR SM MAZGAONKAR for Petitioner
MR HL JANI for Respondent No. 1
MR DM THAKKAR for Respondent No. 2
SERVED for Respondent No. 3,14,15,16,17,18,19,20,21,22
2. Special Civil Application No 4228 of 1985
MR SM MAZGAONKAR for Petitioner
MS SEJAL K MANDAVIA for Respondent No. 1
None for rest of the Respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/09/97

ORAL JUDGEMENT

As identical issue has been raised in both these Special Civil Applications by the petitioners therein, these two matters are taken up together for hearing and are being disposed of by this common judgment.

Arguments have been made by the learned counsel for the petitioners with reference to the Special Civil Application No. 662 of 1985 and as such I have taken the facts from the said petition.

Both the petitioners are Diploma Holders in Civil Engineering. The petitioner was appointed as Work-charged Supervisor (Civil) under the Executive Engineer (Ports-Civil), Porbandar Project Division, with effect from 15.7.1975 under the order dated 17.7.1975, a copy of which is annexed as Annexure-A to the petition. It was a fixed term appointment, but the petitioner has stated that the term of the said appointment was extended from time to time. Under the order dated 20.6.1977 (Annexure-B to the Special Civil Application) the petitioner claimed that he has been given regular appointment on the post of Supervisor (Civil). This appointment has been given to him on the regular establishment. The petitioner has not disputed the fact that under the order dated 3.8.1983 he has been selected for regular appointment as Additional Assistant Engineer (Civil), the post which has been named as such on redesignation of the post of Supervisor (Civil). In this order it has been mentioned that pay of the candidates working on ad hoc basis will, however, be regularised in terms of the Resolution dated 19.12.1981, referred to therein. The petitioner has made the claim in this Special Civil Application that the respondent-Board should have given the seniority to him in the cadre concerned considering his services to be continuous from the date of initial appointment, i.e. 15.7.1975. The respondent-Board has given him seniority by taking his appointment only from the date on which he joined the services in pursuance of the order dated 3.8.1983. The Special Civil Application has been contested by the respondent-Board by filing reply to the same and the contentions raised by the petitioner have been denied.

The learned counsel for the petitioners contended that the petitioners were under the services of the respondent-Board, may be as work-charged and as such their services should be taken to be reckoned from such date of initial appointment and seniority should be assigned to them in the cadre of Supervisor (Civil), now Additional Assistant Engineer (Civil) accordingly. It has next been contended on behalf of the petitioners that the services of the petitioners were not broken at any point of time, but it is true that they were taken initially as Supervisors (Civil) in the workcharge establishment. Lastly, the learned counsel for the petitioners, relying on the decision of the Honourable Supreme Court in the case of the Association of Engineers Class-II reported in AIR 1991, page , contended that ad hoc or temporary services after regular selection of the petitioners should have been taken for the purpose of giving seniority in the cadre concerned.

On the other hand, the learned counsel for the respondents contended that the claim of the petitioners is wholly misconceived. It has next been contended on behalf of the respondents that the ratio of the judgment of the Honourable Supreme Court on which reliance has been placed by the learned counsel for the petitioners, is of little help in the present cases, to them. There the dispute was between the promotees and the direct recruit engineers for seniority, but here the dispute is between the direct recruits for seniority. The petitioners herein are claiming seniority in the category of direct recruits on the basis of their earlier ad hoc and temporary appointments. If that contention is accepted, then the merits in the selection to which the petitioners were subjected to, will have no meaning and though the persons who were found more meritorious than the petitioners as well as those who have been selected earlier in point of time, then the petitioners will get lower seniority. In the matter of direct recruits seniority has been assigned on the basis of merits as assigned to the persons by the Selection Committee. If the contentions raised on behalf of the petitioners is accepted, then the very basis of this principle will be rendered nugatory. It has next been contended on behalf of the respondents that the petitioners were on purely ad hoc and temporary appointment, both under the work-charged establishment as well as in the regular establishment, as is apparent from the orders produced by the petitioners on the record of the Special Civil Applications. The appointment given to the petitioners in the regular establishment was with a clear stipulation that their services are purely temporary and provisional

subject to final arrangement through the Selection Committee. There was a further condition shown in the order of appointment to the effect that their services are liable to be terminated at any time without giving any notice. Otherwise also, looking to the nature of the appointment, the claim made by the petitioner for seniority, is devoid of any substance.

I have given my thoughtful consideration to the submissions made by the learned counsels for the parties. The learned counsel for the petitioners does not dispute the fact that appointments to the posts of Supervisors (Civil) later on redesignated as Additional Assistant Engineer (Civil) are to be made after selection. I do not find anything on record of these Special Civil Applications that the petitioners herein have been given appointment as Work-charged Supervisor (Civil) after any selection. Apart from this, the order dated 17.7.1995 is clear and the appointment of the petitioners as Work-charged Supervisors (Civil) were only on the Work-charged establishment for the period of one year. There it was fixed term temporary appointment. Moreover, there was a specific condition attached to the appointment order that it is liable to be terminated at any time without giving any notice, before the expiry of the period of appointment. Though the petitioners have stated that the term of their appointment has been extended, but I do not find anything on record that there was any extension of the period of appointment. However, even if it is assumed so, then the status of the petitioners remains to be only of temporary work-charged Supervisors (Civil) on the Work-charged establishment for fixed term and subject to the condition as aforesaid, for termination of service without any notice. Much emphasis has been placed by the learned counsel for the petitioners on the order dated 20.6.1977 and he contended that it was a regular appointment.

To appreciate this contention of the learned counsel for the petitioners, I consider it to be necessary to have dissection of this order. From the order, I find that this appointment has been given on a post falling vacant due to repatriation of B.L.Bhatt. The posting of the petitioner was purely temporary and provisional, subject to final arrangement through the Selection Committee. So, it was an appointment given to the petitioner on purely temporary basis till regularly selected candidates are made available. This arrangement continues for considerably long time, but the fact remains that the petitioners have been selected by the Selection Committee only in the year 1983 and they have

been given regular appointment after selection under order dated 3.8.1983. However, taking into consideration the fact that many of the persons appointed under the said order were working on ad hoc basis, certain benefit of pay protection was given. This appointment to the petitioners was subject to condition that they would be on probation for a period of one year. It is specifically provided under Condition No.8 of the appointment order that seniority in the cadre will be as per the rank to be assigned by the Selection Committee. It is no more res integra that a temporary government servant does not become permanent unless he acquires that capacity by force of any rule or is declared as permanent servant. Reference in this respect may be had to the decision of the Honourable Supreme Court in the case of M.P. Hastha Shilpa Vikas Nigam Limited v. Devendrakumar Jain and others (JT 1995(1) SC 198). Reference may also be had to the judgment of the Division Bench of this Court reported in 1995(2) GLH 228. The learned counsel for the petitioners, on being asked by the Court, is unable to show any provision from the statute or regulation of the respondent-Board under which it has been provided that the temporary services of an Engineer on being continued for a long period, will automatically culminate in permanency. I do not find anything on record to show that the ad hoc temporary appointments given to the petitioners have been made permanent. Otherwise also the appointments of the petitioners in the regular establishments of the respondent-Board, under order dated 20.6.1977 was nothing, but a back-door entry. This appointment was not made after any selection. The provisions of Articles 14 and 16 of the Constitution are equally applicable to the temporary appointments. The rules regulating recruitment and service conditions in the cadre have not been produced on record of these Special Civil Applications by either of the parties. However, even if it is taken that there is not any such rule, still the constitutional provisions are there and before making any appointment even on temporary basis in the regular establishment, may be a work-charged establishment, those constitutional provisions are to be strictly adhered to. It is no more res integra that all the eligible candidates should be given equal opportunity in the matter of appointments in public employment. This precisely has not been done in the present case while the petitioners have been given temporary appointments in work-charged establishment or regular establishment. Even if it is taken to be a case of temporary appointment given after selection, still it is difficult to accept the contentions of the learned counsel for the petitioners that services of the petitioners rendered as

such should have been counted for the purpose of giving seniority after their regular selection in the cadre concerned. If that is permitted by this Court, it would amount to perpetuating an illegal act. In the matter of selection, undisputedly, seniority has to be given in the order of merits assigned to the candidates in the selection. The candidates should be given seniority as per the rank number in the selection. The appointment which is given illegally cannot be considered for the purpose of giving seniority above those persons, who have competed with the petitioners for regular selection. If the claim of the petitioners made in these petition is allowed, then this Court will be asking the respondents to act contrary to the rules for assigning seniority as well as contrary to the provisions of Articles 14 and 16 of the Constitution of India. The ratio of the decision of the Honourable Supreme Court on which reliance has been placed by the petitioners is of little help to them in the present cases, as contended by the learned counsel for the respondent-Board.

These are the two petitioners, who have, knowing full well the position about their seniority, dragged the respondent-Board in these litigations. The expenses incurred by the Board in defending these litigations are public money and its employees cannot be permitted to compel the respondent-Board to spend money for frivolous litigation. On being asked by the Court, the learned counsel for the respondent-Board submitted that the respondent Board has paid amount of Rs.3,000/- each for defending these petitions.

In result, both these petitions are dismissed. Rule discharged with costs which is quantified to Rs.3,000/- in each petition, to be paid to the respondent-Board. However, as these matters pertain to the employees of the respondent-Board, it is expected of the respondent-Board to recover this amount of costs from the salary of the petitioners in reasonable monthly installments. Interim relief, if any, granted by this Court stands vacated.

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